

# STATE OF ARIZONA

Department of Revenue



Janet Napolitano  
Governor

J. Elliott Hibbs  
Director

June 2, 2004

The Arizona Department of Revenue has proposed amendments to the administrative rules addressing the transaction privilege and use tax refund for motion picture production companies found at Arizona Revised Statutes § 42-5015. In an ongoing effort to interact with and inform the public regarding issues relating to taxation, the Department would appreciate your comments on these proposed rules. If applicable, please forward this notice to divisions or members of your organization to whom the proposed rules will apply, as well as other interested parties.

Drafts of the proposed rules are attached for your review and comment. If we do not hear from you by **July 2, 2004**, we will assume you have no undue concerns and will proceed with the formal rulemaking process. If you require additional time, please notify this office on or before this date. Comments that are received will be reviewed and revisions will be made accordingly.

Please address your comments to:

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Thank you for your continuing efforts in establishing an ongoing line of communication with the Department of Revenue.

Sincerely,

Hsin Pai  
Tax Analyst  
Tax Policy & Research Division

Attachment

*NOTICE: The Arizona Department of Revenue (ADOR) is circulating this draft of proposed administrative rules for **informal review and comment** purposes only. The Arizona Secretary of State will publish notices of ADOR's official rulemaking actions on these and other administrative rules in the Arizona Administrative Register (available online at <http://www.sosaz.com/aar>).*

**TITLE 15. REVENUE  
CHAPTER 5. DEPARTMENT OF REVENUE  
TRANSACTION PRIVILEGE AND USE TAX SECTION  
ARTICLE 22. SALES TAX—ADMINISTRATION**

**R15-5-2240. Repealed Motion Picture Production Refund**

**A.** In addition to the definitions provided in A.R.S. § 42-5015(H), the following terms apply in this Article:

1. “Administrative or distribution activities” means activities related to the promotion or sale of a motion picture. Examples include performing office work, ordering or receiving office materials, making travel arrangements, preparing shooting schedules, preparing work and payroll records, and duplicating storage media for exhibition or broadcast.
2. “Checking account from a financial institution in this state” means a checking account in an Arizona office or branch office of a financial institution.
3. “Commercial distribution or licensing” means public exhibition or broadcast on or in movie theaters, television, videocassettes, videotapes, videodiscs, amusement parks, or common carriers, for which the motion picture production company will be compensated.
4. “Completing the filming or production activities” means the date that filming or production activities are completed in this state.
5. “Filming or production activities” means activities that are undertaken directly and exclusively in the creation or processing of a motion picture for commercial distribution or licensing. The term does not include activities such as administrative or distribution activities. The term includes:
  - a. Activities performed during the actual shooting of a motion picture in Arizona, either on location or at a studio;
  - b. Activities that are part of the process of recording the actions taking place within the motion picture;
  - c. Activities performed in preparation for shooting or recording the motion picture, such as constructing sets, obtaining props, renting stages or locations, and wardrobe purchasing; or
  - d. The editing, dubbing, or mixing of the motion picture to transform individual actions shot or recorded into a cohesive motion picture, including the image selection process and manipulation of the film, tape,

or other analog or digital storage medium.

6. “Motion picture” means an original work of film, digital media, video, televised episodic or featured programming, or commercial advertising. The term does not include works that are created without the purpose of commercial distribution or licensing; examples include: a student film created for a class project, a wedding video created for use as a family memento, and coverage of a music concert or athletic event for rebroadcast during the concert or event. The term includes an original work that is:
  - a. Created by filming or production activities conducted in whole or in part in this state;
  - b. Fixed on film, videotape, disc, or another similar analog or digital storage medium;
  - c. Capable of being viewed or reproduced; and
  - d. Intended for commercial distribution or licensing in the storage medium used.
7. “Shooting” means taking one or a series of pictures or images with a camera.

**B.** A motion picture production company qualifies for a refund of the transaction privilege or use tax on tangible personal property if:

1. The motion picture production company paid transaction privilege or use tax on the tangible personal property;
2. The motion picture production company:
  - a. Purchased in this state or leased for exclusive use in this state the tangible personal property from an Arizona vendor, or
  - b. Purchased the tangible personal property from an out-of-state vendor while the motion picture production company was conducting filming or production activities in this state; and
3. The tangible personal property is specifically suited to and consumed in or used exclusively for filming or production activities.

**C.** If two or more persons who conduct filming or production activities in this state form a partnership to reduce costs through the sharing of equipment, studio facilities, or services of personnel, the furnishing, without transfer of title, of the equipment, facilities, or services by the partnership to the partners for creating a motion picture qualifies the partnership for a refund of the transaction privilege or use tax under this Article.

- D.** A motion picture production company shall furnish copies of records that support a claim for refund, as documented in the total expenditure report, the payroll expenditure report, and the final expenditure report, to the Department upon request.
- E.** Pursuant to A.R.S. § 42-5015(B), a person designated as responsible for maintaining records of expenditures shall retain the records for the limitation period provided by A.R.S. § 42-1104.

#### **R15-5-2241. Spending Requirements**

- A.** A motion picture production company shall satisfy the statutory spending requirements ~~prior to~~ before applying for a refund.
- B.** ~~The statutory 12-month period begins with the first expenditure in the state reported at the discretion of the motion picture company.~~
- C. B.** ~~For purposes of determining~~ To determine a motion picture production company's includible expenditures within a 12-month period, both of the following shall provisions apply:
1. ~~The date of the expenditure, regardless of the method of payment, shall establish the qualification of the~~ establishes whether an expenditure is included in satisfying the statutory requirement qualifying amount. See A.R.S. § 42-5015(F).
  2. Any expenditure made by credit card or petty cash ~~shall be~~ is includible if both of the following conditions are met ~~prior to~~ before the submission of the refund request:
    - a. ~~The motion picture production company pays the credit card liability shall be paid through the~~ from a checking account ~~in~~ from a financial institution in this state; <sup>1</sup> and
    - b. ~~The motion picture production company reimburses the~~ petty cash account shall be reimbursed ~~through the~~ from a checking account ~~in~~ from a financial institution in this state.
- D. C.** ~~For purposes of determining~~ To determine the location of a transaction, both of the following criteria ~~shall~~ apply:
1. For retail purchases of tangible personal property, the location of the transaction ~~shall be~~ is determined ~~at by~~ the time and place ~~that where~~ the customer takes title to the personal property. Title passes at the time and place of the physical delivery of the goods to the purchaser, <sup>1</sup> absent any agreement to the contrary. If an agreement exists regarding the delivery of the tangible personal property, title

passes at the location designated in the agreement.

2. For leases of tangible personal property, the location of the transaction ~~shall be~~ is determined pursuant to ~~Article 15~~ 15 A.A.C. 5, Article 15.

#### **R15-5-2242. Reports**

**A.** ~~The A~~ motion picture production company shall submit all of the following reports ~~when applying with an application~~ for a refund of transaction privilege or use taxes paid:

1. ~~The A~~ total expenditure report, ~~in order to document that the company has had at least \$1 million in total qualified expenditures or at least \$250,000 for commercial advertising production during the 12-month period and which shows~~ show that the expenditures were paid through a financial institution in this state;
2. ~~The A~~ payroll expenditure report, ~~for purposes of documenting to document salaries and wages paid to Arizona residents filing who filed an Arizona personal income tax return in the preceding year; and~~
3. ~~The A~~ final expenditure report, ~~documenting to document purchases and leases of tangible personal property within the state of Arizona in this state~~ upon which a tax refund may be obtained.

**B.** A claim for a refund of transaction privilege or use taxes paid is considered filed on the date that all reports required in subsection (A) are submitted to the Department. A report in subsection (A) is considered submitted to the Department on the date that all information required in the report, as prescribed in this Section, is provided by the motion picture production company applying for the refund.

**B. C.** The total expenditure report shall include all of the following information:

1. The name of ~~the~~ each vendor,
2. The period covered,
3. A description of ~~the~~ each expenditure, and
4. The total amount of ~~the~~ each expenditure.

**C. D.** The payroll expenditure report shall include all of the following information:

1. ~~Employee~~ The name; of each employee,
2. ~~Employee~~ The social security number; for each employee,

3. ~~Period~~ The period covered, and
4. ~~Total~~ The total wages paid to each employee for the period.

**D. E.** The final expenditure report shall include all of the following information:

1. ~~Name~~ The name of each vendor;
2. To claim a refund of Arizona transaction privilege tax or where a third party, other than the motion picture production company, is the taxpayer, the Arizona Transaction Privilege Tax license number of any the vendor if purchases or leases of tangible personal property from that vendor total \$500 or more;
3. ~~Purchase~~ The order numbers or vendor's invoice numbers, including dates;
4. ~~Name~~ The name of the financial institution and the ~~number~~ numbers of the ~~check~~ which was checks that the company used to purchase or lease tangible personal property;
5. ~~Credit~~ Each credit card number used to purchase or lease tangible personal property;
6. ~~Date~~ The date of ~~purchase~~ each purchase or ~~lease~~ lease;
7. ~~Description~~ A description of each item of tangible personal property purchased or leased;
8. ~~City~~ The cities where the company purchased or leased tangible personal property ~~purchased or leased~~;
9. ~~Price~~ The price of the tangible personal property before tax;
10. ~~Total~~ The total amount of tax paid; and
11. ~~Type~~ The type of tax paid: transaction privilege or use tax.

**E. F.** ~~Forms as~~ A motion picture production company shall use a form, issued by the Department, of Revenue may be used for submission of to submit the required information.